



September 20, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342

OR2000-3639

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139441.

The Texas Department of Criminal Justice (the "department") received a request for the responses from all vendors with regard to IT087984 for telecommunications systems, and the evaluations with related documents. You state that only one vendor submitted a proposal. First, you state that, although you believe the requested information to be confidential as a trade secret under 552.110(a), the department is unable to make a *prima facie* case for the information's confidentiality and therefore must rely on the vendor to make such a case. Next, you state that the pricing information at issue is confidential commercial and financial information under section 552.110(b), but that the department defers to the vendor to make a more definitive argument. Therefore, the department is asking this office for a decision under section 552.305(d) of the Government Code. *See* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to the Public Information Act in certain circumstances). We note that you have notified the vendor of the request in accordance with the requirements in section 552.305(d). *See* Gov't Code § 552.305(d).

As of the date of this letter, the vendor has not submitted to this office its reasons explaining why the requested information should not be released. Therefore, we have no basis to conclude that the responsive information is excepted from disclosure. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it

actually faces competition and that substantial competitive injury would likely result from disclosure). Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore the department must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

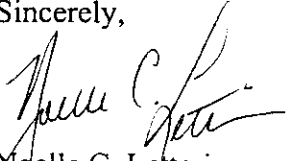
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noelle C. Letteri', written over a horizontal line.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 139441

Encl. Submitted documents

cc: Mr. Jerrold Ravel
NEC-BNS, Incorporated
Major Account Executive
1624 West Walnut Hill
Irving, Texas 75038
(w/o enclosures)

Williams Communication Solutions, L.L.C.
Attn: Ms. Maureen Gindler
11525-A Stonehollow Drive, Suite 170
Austin, Texas 78758
(w/o enclosures)